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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chris Langer,
Plaintiff,
v.
U.S. Bancorp, a Delaware
Corporation; and Does 1-10,
Defendants.

Case No. '14CV1460 H DHB

Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Plaintiff Chris Langer complains of Defendants U.S. Bancorp, a Delaware Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van and he has a Disabled Person Parking Placard issued to him by the State of California.

1 2. Defendant U.S. Bancorp owns and operates the US Bank (“Bank”), as
2 well as owns the property, located at or about 770 Carlsbad Village Drive,
3 Carlsbad, California, now and did so in December 2012.

4 3. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained
7 of, and alleges a joint venture and common enterprise by all such
8 Defendants. Plaintiff is informed and believes that each of the Defendants
9 herein, including Does 1 through 10, inclusive, is responsible in some
10 capacity for the events herein alleged, or is a necessary party for obtaining
11 appropriate relief. Plaintiff will seek leave to amend when the true names,
12 capacities, connections, and responsibilities of the Defendants and Does 1
13 through 10, inclusive, are ascertained.

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15 **JURISDICTION & VENUE:**

16 4. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
18 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 5. Pursuant to pendant jurisdiction, an attendant and related cause of
20 action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California’s Unruh Civil Rights
22 Act, and the California Disabled Persons Act, which acts expressly
23 incorporate the Americans with Disabilities Act.

24 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
25 founded on the fact that the real property which is the subject of this action
26 is located in this district and that Plaintiff's cause of action arose in this
27 district.

1 **FACTUAL ALLEGATIONS:**

2 7. The Plaintiff went to the Bank in December 2012, to make a deposit.

3 8. The Bank is a facility open to the public, a place of public
4 accommodation, and a business establishment.

5 9. Parking spaces are one of the facilities, privileges and advantages
6 offered by defendants to their customers at the Bank.

7 10. Unfortunately, there are no van-accessible parking spaces available for
8 disabled customers at the Bank, even though parking is provided in the
9 parking lot for ambulatory customers. In fact, there is no access aisle
10 attached to the only parking space that could be reserved for disabled
11 persons.

12 11. Plaintiff believes that a van-accessible parking space once existed at
13 this location, however. Unfortunately, the defendants have allowed the
14 access aisle to fade or allowed it to be paved over. Defendants have no
15 policy or procedure to maintain the parking lot, though, so that the parking
16 spaces remain useable by disabled persons.

17 12. There is also no pole-mounted signage that accompanies the parking
18 space.

19 13. The plaintiff personally encountered this problem. This inaccessible
20 condition denied the plaintiff full and equal access and caused him difficulty.

21 14. Plaintiff would like to return and patronize the Bank but will be
22 deterred from visiting until the defendants cure the violation.

23 15. Additionally, on information and belief, the plaintiff alleges that the
24 failure to remove these barriers was intentional because: (1) these particular
25 barriers are intuitive and obvious; (2) the defendants exercised control and
26 dominion over the conditions at this location and, therefore, the lack of
27 accessible facilities was not an “accident” because had the defendants
28 intended any other configuration, they had the means and ability to make the

1 change.

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3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
4 WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against
5 all defendants (42 U.S.C. section 12101, et seq.)

6 16. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint.

9 17. Under the ADA, it is an act of discrimination to fail to ensure that the
10 privileges, advantages, accommodations, facilities, goods and services of
11 any place of public accommodation is offered on a full and equal basis by
12 anyone who owns, leases, or operates a place of public accommodation. See
13 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 14 a. A failure to make reasonable modifications in policies, practices,
15 or procedures, when such modifications are necessary to afford
16 goods, services, facilities, privileges, advantages, or
17 accommodations to individuals with disabilities, unless the
18 accommodation would work a fundamental alteration of those
19 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 20 b. A failure to remove architectural barriers where such removal is
21 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
22 defined by reference to the ADAAG, found at 28 C.F.R., Part
23 36, Appendix "D."
- 24 c. A failure to make alterations in such a manner that, to the
25 maximum extent feasible, the altered portions of the facility are
26 readily accessible to and usable by individuals with disabilities,
27 including individuals who use wheelchairs or to ensure that, to
28 the maximum extent feasible, the path of travel to the altered

area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

18. Any business that provides parking spaces must provide handicap parking spaces. 1991 Standards § 4.1.2(5). One in every eight of those handicap parking spaces but not less than one must be a “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991 Standards § 4.1.2(5)(b).

19. Here, there was no van-accessible parking space available on the day of plaintiff's visit because the parking space did not have an 8-foot access aisle. In fact, there was no access aisle whatsoever. The lack of an accessible parking space is a violation of the law.

20. The defendants have no policy or procedure to maintain their parking spaces so that they remain useable for disabled persons.

21. There was also no pole-mounted signage accompanying the parking space.

22. To qualify as a reserved handicap parking space, the space must be properly marked and designated. Under the ADA, the method and color of marking are to be addressed by State or local laws or regulations. See 36 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to properly and effectively reserve a parking space for persons with disabilities, each such space must be identified with a reflectorized sign permanently posted adjacent to and visible from each stall or space. CBC § 1129B.4. The sign must consist of the International Symbol of Accessibility in white on a blue background. Id. It cannot be smaller than 70 square inches and must be mounted so that there is a minimum of 80 inches from the bottom of the sign to the parking space. Id. Signs must be posted so that they cannot be obscured by a vehicle parking in the space. Id. An additional sign or

1 additional language below the symbol of accessibility must state, “Minimum
2 Fine \$250” to ensure that the space remains available for persons with
3 disabilities. Id. Another sign must be posted in a conspicuous place at the
4 entrance to the parking lot or immediately adjacent to each handicap parking
5 space, with lettering 1 inch in height, that clearly and conspicuously warn
6 that unauthorized vehicles parking in the handicap parking spaces can be
7 towed at the owner’s expense. Id. Additionally, the surface of the handicap
8 parking stall must have a profile view of a wheelchair occupant that is 36
9 inches by 36 inches. Id. And the surface of the access aisle must have a blue
10 border. CBC § 1129B.3. The words “NO PARKING” in letters at least a foot
11 high must be painted on the access aisle. Id.

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13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH
14 CIVIL RIGHTS ACT (On behalf of plaintiffs and against all defendants)
15 (Cal Civ § 51-53)**

16 23. Plaintiff repleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint.

19 24. Because the defendants violated the plaintiffs’ rights under the ADA,
20 they also violated the Unruh Civil Rights Act and are liable for damages.
21 (Civ. Code § 51(f), 52(a).)

22 25. Because the violation of the Unruh Civil Rights Act resulted in
23 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
24 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
25 55.56(a)-(c).)

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1 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**
2 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and
3 against all defendants) (Cal Civ. § 54-54.8)

4 26. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 27. Because the defendants violated the plaintiff's rights under the ADA,
8 they also violated the Disabled Persons Act and are liable for damages. (Civ.
9 Code § 54.1(d), 54.3(a).)

10 28. Because the violation of the Disabled Persons Act resulted in
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
13 55.56(a)-(c).)

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15 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of
16 plaintiff and against all defendants)

17 29. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint.

20 30. The Defendants had a general duty and a duty arising under the
21 Americans with Disabilities Act and the Unruh Civil Rights Act and
22 California Disabled Persons Act to provide safe, convenient, and accessible
23 facilities to the plaintiffs. Their breach of this duty, as alleged in the
24 preceding paragraphs, has caused injury and damage as alleged above.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 Plaintiffs are not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act and/or the California
9 Disabled Persons Act which damages provide for actual damages and a
10 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
11 acts, simultaneously, and an election will be made prior to or at trial.

12 3. Reasonable attorney fees, litigation expenses and costs of suit,
13 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

14 Dated: June 9, 2014 CENTER FOR DISABILITY ACCESS

16 By: 

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18 Mark Potter, Esq.
Attorneys for Plaintiff